

Bluth



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Kalara Corporation--Reconsideration

**File:** B-230562.8

**Date:** November 2, 1989

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### DIGEST

Protest alleging that a set-aside for small disadvantaged business concerns was improper is untimely where not filed until after proposals, including best and final offers, had been submitted and the contract awarded.

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### DECISION

Kalara Corporation requests that we reconsider our September 28, 1989, dismissal of its protest against the small disadvantaged business (SDB) set-aside of request for proposals No. DAKF19-88-R-0035, issued by the Department of the Army for full food service and dining facility attendants at Fort Riley. We dismissed Kalara's protest as untimely as it was based on an alleged impropriety in the solicitation but was not filed prior to the closing date for receipt of proposals.

We affirm our prior dismissal.

The solicitation was originally issued on February 5, 1988, as a total SDB set-aside pursuant to Department of Defense Federal Acquisition Supplement §§ 219.501-70 and 219.502-72. Following a series of amendments, initial proposals were due on March 25, 1988, the last round of best and final offers were due September 11, 1989, and the contract was awarded on September 26.

Kalara initially protested this procurement on September 27. In its protest Kalara alleged that although it was legally permissible for the procurement to be an SDB set-aside at the time the solicitation was issued,<sup>1/</sup> in the

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<sup>1/</sup> In fact, we have held that this particular procurement was properly set aside for SDB's. Integrity Management Int'l; Logistical Support, Inc., B-229632.2 et al., Apr. 1, 1988, 88-1 CPD ¶ 330.

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interim between the issuance of the solicitation and the award of the contract the law was changed to prohibit an SDB set-aside under the circumstances here.

We dismissed the protest as untimely because it was based on an impropriety contained in the solicitation yet was not filed until after award. 4 C.F.R. § 21.2(a)(1) (1989).

The protester contends that because the issue raised is a complex one, it is not "apparent" from reading the solicitation; that if we apply the timeliness rule Kalara would have never been able to file a protest because the corporation was not formed until after proposals were submitted; and that even if its protest is untimely it should be considered under the significant issue exception to our timeliness rules.

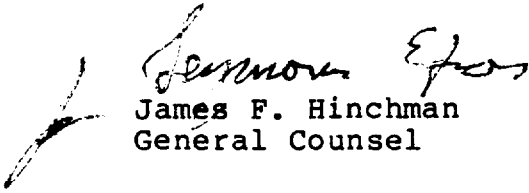
The protester argues that it could not have satisfied our timeliness rules since the company was not even in existence until 1989, after proposals in this procurement had been submitted. We do not think this circumstance provides any valid basis for waiving our timeliness rules, which are intended to permit interested parties a reasonable time in which to challenge procurement actions without unduly disrupting the government's acquisition of needed goods and services. We understand the protester's desire as a recently-formed--and, we assume, small but not disadvantaged business concern--to compete for the Fort Riley contract. That, however, is an insufficient basis for us to consider an untimely protest of a solicitation's provisions filed the day after a contract has been awarded.

As the above discussion indicates, we find unpersuasive Kalara's contention that the alleged impropriety was not apparent from the solicitation because it is a complex issue. The term "apparent" in our cases refers not to the degree of complexity of an issue but rather to whether the solicitation itself contained the alleged impropriety. Here, the solicitation was specifically set aside for SDB's, which was clearly evident from the solicitation itself. The protester's submissions evidence a clear understanding of what the solicitation provides and why in the protester's view the SDB set-aside is improper. The protester's principal problem is not in understanding the solicitation and its import, but the fact that the protester was not even in existence until late in the procurement process and did not file a protest until after a contract had been awarded.

The protester's final argument is that even if the protest is untimely it should be considered under our significant issue exception because it presents important and difficult

issues of appropriations law. We disagree. Whether a protest presents a significant issue is necessarily determined on a case-by-case basis; we will, in a given case, invoke the exception when our consideration of the protest would be in the interest of the procurement system. Oakland Scavenger Co.--Request for Recon., B-232958.2, June 1, 1989, 89-1 CPD ¶ 541. Here, we fail to see how our consideration of the protest, which concerns only whether this particular procurement was properly awarded as an SDB set-aside, would be of widespread interest to the procurement system so as to justify invoking the exception to our timeliness rules and relieving the protester of its obligation to act diligently in its pursuit of a protest.

The prior dismissal is affirmed.



James F. Hinchman  
General Counsel